



Reasons for decision

Teamsters Canada Rail Conference,

applicant,

and

Canadian Pacific Railway Company,

respondent.

Board File: 30305-C

Neutral Citation: 2014 CIRB 713

February 12, 2014

Appearances

Mr. Denis W. Ellickson, for the Teamsters Canada Rail Conference;

Mr. Nizam Hasham, for the Canadian Pacific Railway Company.

On January 24, 2014, the Teamsters Canada Rail Conference (TCRC or the union) filed a complaint with the Canada Industrial Relations Board (the Board), alleging that the Canadian Pacific Railway Company (CP Rail or the employer) had violated sections 8(1), 94(1)(a) and 94(3)(a),(b) and (e) of the *Canada Labour Code (Part I—Industrial Relations)* (the *Code*). This complaint was accompanied by an application for an interim order pursuant to section 19.1 of the *Code*, requesting that the Board order a return to the *status quo* until the complaint had been determined.

The Board composed of Ms. Elizabeth MacPherson, Chairperson, and Messrs. Robert Monette and Norman Rivard, Members, conducted a hearing by teleconference on February 7, 2014 with respect to the application for an interim order. Following the hearing, the parties were advised that the Board had determined that an interim order was not warranted at the time. These are the reasons for that decision.

I. Background

[1] CP Rail has rail operations stretching from Montréal, Quebec to Vancouver, British Columbia, including 28 terminals in various locations along the rail line. Since March 2004, the TCRC has represented a consolidated bargaining unit composed of 3700 running trades employees (locomotive engineers, conductors, brakemen, yardmen, etc.) working on CP Rail's Canadian operations. The union has four General Committees of Adjustment (GCA) for running trades at CP Rail: the conductors, trainmen and yardmen have one GCA in Eastern Canada and one in Western Canada, and the locomotive engineers also have one Eastern and one Western GCA. The GCAs are headed by a General Chairperson, assisted by Vice-General Chairpersons.

[2] In addition, the union has 38 divisions at CP Rail. TCRC Divisions that are multi-craft contain more than one Local Committee of Adjustment (LCA), so there are craft specific Local Chairmen at each terminal. Each LCA elects a Local Chairman and two Vice-Local Chairs. As well, each Division elects a President, Vice-President, Secretary Treasurer (S/T), Alternate S/T, Chaplin, three Trustees, a Legislative Representative (LR) and a TCRC Convention Delegate. Division LRs are delegates to the Provincial Legislative Board and the Local Chairmen are delegates to their respective GCAs. In multi-craft divisions, there is also an alternate LR for each craft and an additional craft delegate to the TCRC Convention.

[3] At the local level, provisions regarding time off for union business are generally contained in the local rules. On December 11, 2013, the employer wrote to each of the General Chairpersons, as follows:

This letter is in reference to employees taking time off work for the purposes of conducting Union Business. It is well recognized that some time off for Union business is required for formal investigations and other union duties. However, year to date, we have experienced an extraordinary 4000 days of unavailability associated with Union Business absences.

That stated, a proper balance must be maintained in order to ensure that employees are available for duty and that the operation is fluid and not incurring excess cost on account of these absences as outlined in CROA Case 3088.

Therefore, effective immediately, the Company, acting reasonably, will grant local Chairpersons time off for purpose of conducting Union Business from Monday to Friday, provided these requests are not in conflict with operational requirements, examples of which include train delays, the timely processing of traffic, or meeting customer commitments.

In instances where there is disagreement, the Superintendent of the Territory will have final judgment on the matter.

On weekends, given availability trends, it will be necessary for these local Chair(s) to seek advance approval from their Superintendent in order to secure time off for Union Business.

All other locally designated Union representatives must make a formal request in writing to their respective Superintendent for any desired time for purposes of Union Business. Please feel free to contact us if you have any questions or concerns.

I also ask that you please provide this office with a list of accredited local Union representatives (or employees who perform work for Union from time to time, including but not limited to, Vice Local Chairpersons, Treasurers, Secretaries).

Finally, please also include the various dates of monthly (or other) union meetings (local or otherwise) by location. As you can understand, this is an important requirement for planning purposes.

[4] Also at this time, the employer advised a number of the Local Chairs that it was ceasing the practice of allowing them to bid for their vacation time outside of the process set out in the collective agreement. Historically, Local Chairs had been permitted to bid vacation at their discretion, outside of the normal bidding process. In some locations, this arrangement was set out in the local rules. In terminals where a local rule was in place, the employer sent a letter giving notice of cancellation of the local rule.

[5] On January 13, 2014, the employer sent a second letter to the General Chairmen, modifying its position with respect to time off for Local Chairs to conduct union business, but imposing new directives affecting employees who are absent on union business for more than seven consecutive calendar days:

This has reference to our letter of December 11, 2013 in connection with employees taking time off work for the purposes of conducting Union Business. As previously stated, the Company recognizes that some time off for Union business is required for formal investigations and other Union duties. However, in 2013 and as previously advised, we experienced more than 4000 days of unavailability associated with Union Business absences in Canada.

We have reviewed this issue once again; effective immediately, the following guidelines will be applied to all accredited TCRC representatives seeking time off for Union business:

- Designated Local Chairs at each terminal will be granted time off at their discretion for purposes of attending Union business related matters. We would ask that as much advance notice is provided to local management when it is determined that time off for Union business is required. In the event that any possible abuse of this arrangement is perceived, the matter will be raised with the respective General Chairman for immediate review and resolution.

- Any other designated Union representative(s) must first seek advance approval from their Superintendent. The Superintendent or designated manager will review the nature of the request and also assess manpower needs. While every effort will be made to accommodate reasonable requests for time off, the ultimate responsibility will rest with management as they are responsible for meeting operational and customer service needs.

- Any employee who has been on Union business for more than seven consecutive calendar days will be placed on "leave of absence" status. This will assist the Company in determining available manpower and with the adjustment of our working boards. It will be the responsibility of any employee who has been placed on "leave of absence" status to book themselves back on for work when available through the Crew Management Centre (CMC). Employees will not be permitted to book themselves on directly from "leave of absence" status to Union business status.

To assist in the administration of the above, we would also appreciate it if you would forward the current list of Local Chairpersons by location, in addition to the list of the locally designated officers, i.e. Local President, Secretary Treasurer, Health and Safety rep etc.

I am sure you will agree that the above arrangements are both fair and equitable. Please feel free to contact me should you wish to discuss this matter further.

[6] The union seeks an interim order from the Board compelling the employer to return to the *status quo* and directing the employer to rescind its directives regarding leaves of absences for employees to conduct union business and the selection of vacation by Local Chairs, until otherwise directed by the Board.

II. Positions of the Parties

A. The TCRC

[7] The union argues that an interim order is required to preserve the *status quo* until the Board can hear and determine its allegations that the employer's actions violate numerous provisions of the *Code*. It reminds the Board that, when the employer engaged in the wholesale cancellation of the local rules in 2012, the Board issued an interim order (696-NB) to restore the *status quo* until the union's complaint was heard. In that case, the Board eventually determined that the employer's actions in cancelling a large majority of the local agreements, at the time and in the manner that it did, violated section 94(1)(a) of the *Code* and directed the employer to

reinstate the local agreements that had been cancelled (see *Canadian Pacific Railway Company*, 2012 CIRB 669) (*CPRail 669*).

[8] The union argues that there is a serious issue to be tried in this case, namely the right of union officials to take time off to conduct union business. It asserts that the union representatives' ability to perform the functions necessary for the union to acquit its responsibilities under the *Code* is an important right.

[9] The union argues that irreparable harm, which could not be compensated by damages, would occur if the employer is not ordered to stay its new directives. Any leave that is denied to union officers means that, once the event has taken place, it is impossible to compensate that person for the lost opportunity to participate. The union also points out that when an employee is placed on a leave of absence, as the employer proposes to do after a union officer is on leave for union business for seven days or more, there is an effect on that person's pension benefits. It also argues that union officials need to retain the ability to book their vacations outside of the normal booking period, due to the unpredictable nature of their union duties. The union also notes the chilling effect that the employer's actions may have on the willingness of bargaining unit members to serve as union representatives.

[10] The union argues that the balance of convenience favours the granting of an interim order. It suggests that, by failing to ensure that there is a sufficient number of operating crews, the company has created the problem it is trying to solve through cutbacks in leaves for union business. It asserts that the employer's economic interests should not be permitted to trump the union's ability to meet its *Code* obligations.

[11] The union submits that, if matters were left up to the employer, union officers would never be granted leave to conduct union business. The union suggests that there is no compelling business reason for the changes that the employer has made to the process of granting leave for union business. In its view, the previous arrangements should be left in place until the Board can determine whether the changes implemented by the employer violate the *Code*. The union asserts that this is an urgent matter, as the time delays inherent in the grievance arbitration process prevent the union from obtaining a ruling in time for the union events that will be taking place over the next few months.

B. CP Rail

[12] The employer submits that the union's contention that it must have the ability to book members off for union business, without any interference by the employer, amounts to a request for the unfettered ability to take such time off regardless of its effect on the employer's operations. The employer suggests that it is simply asking for some orderliness in the booking of time-off to conduct union business.

[13] The employer suggests that an interim order is an extraordinary measure, and that the circumstances of this case do not rise to the level of urgency that would justify such an order. It states that there needs to be a level of reasonableness as to how time-off for union business is scheduled and that not every denial of union leave constitutes interference with the administration of the union. It asserts that it is simply trying to obtain information that will allow it to operate its business efficiently, and that union officers will be given time-off subject to the employer's operational requirements.

[14] The employer points out that the union has filed two policy grievances regarding the employer's new directives and therefore has a mechanism in the collective agreement through which to obtain remedies.

III. Analysis and Decision

[15] While the Board does not often issue interim orders in the nature of a cease and desist order, it will do so in appropriate cases. To that extent, the granting of an interim order is not an extraordinary measure, it is simply a measure that is utilized when the circumstances warrant. The granting of an interim order does not prejudice the merits of the underlying application (see *Bell Mobility Inc.*, 2009 CIRB 457). It is aimed at neutralizing the potential harm of an alleged unfair labour practice, pending the final determination of a complaint. In determining whether an interim order should be issued, the Board considers whether the complaint raises a serious issue; whether there is likely to be irreparable harm; the balance of convenience; and the broader considerations of constructive labour management relations.

[16] In this case, the union indicates that there are a number of upcoming events that will potentially be affected by the employer's new directives affecting leave for union business. These include the monthly divisional meetings; the Western Canada Locomotive Engineers Local Chair training at the end of February; the May Western General Committee meetings; the as yet unscheduled Eastern General Committee meetings; the quadrennial meeting of the Provincial Legislative Boards; and the September 2014 Quadrennial Convention. In addition, a union representative's attendance is required at all formal employee statement meetings, which can be held at any time. It contends that irreparable harm will occur if union officers are prevented from attending these meetings.

[17] However, the union was unable to provide any examples of requests for leave for union business that had been refused since the employer issued its December 2013 and January 2014 letters. As of the date of the hearing, the employer had not received any requests for leave to attend the February 11, 2014 divisional meetings. It had received a list of the names of the individuals scheduled to attend the February training session, but was seeking further details of the amount of time-off that would be required for each individual.

[18] With respect to one individual whom the union alleged had been granted leave that was subsequently cancelled, the employer indicated that the person had come back from injury status and attempted to book two days rest, which was denied. He then booked off on union business instead, which the employer also denied. The employer suggests that this was an instance of abuse of the provisions related to leave for union business that the union should not condone.

[19] In *CPRail 669*, the Board considered the ability of union representatives to carry out their statutory responsibility to fairly represent the members of the bargaining unit to be a serious issue justifying the Board's intervention on an interim basis. In this case, the TCRC has been unable to provide any evidence of actual or imminent harm caused by the employer's new directives regarding leave for union business. The harm that the union asserts is therefore wholly speculative. As a result, this case is distinguishable from the circumstances in *CPRail 669*, where the Board found that CP Rail's wholesale cancellation of the majority of local agreements constituted an interference with the union's ability to represent the members of its bargaining units. In that case, the Board considered it necessary to prevent the employer's implementation

of its decision to cancel the local agreements until the Board could hear and determine the extent to which such cancellations would interfere with the union's ability to represent its members. In the instant case, the employer is not denying the union officials time off for union business, although it is placing parameters around such leaves.

[20] In the instant case, given that a hearing of the complaint has been scheduled for April 14 to 17, 2014, well before a number of the events that are of concern to the union, and in view of the lack of evidence of any actual or imminent harm to date, the Board is of the view that the balance of convenience favours the employer.

[21] This is clearly a case where the interests of constructive labour relations would be better served by a dialogue between the parties, aimed at working out a compromise that both can endorse. The Board strongly encourages the parties to endeavour to resolve the issues giving rise to the related unfair labour practice complaint, failing which the hearing will proceed on April 14, 2014 as scheduled.

[22] The application for an interim order is denied.

[23] This is a unanimous decision of the Board.

Elizabeth MacPherson
Chairperson

Robert Monette
Member

Norman Rivard
Member